

Smith, Corey (TAX)

From: Smith, Corey (TAX)
Sent: Thursday, May 13, 2021 3:10 AM
To: Varnado, Jason S.; Keneally, Kathy; Loonam, James P.; Druce, Georgina N.
Cc: Magnani, Christopher (TAX); Langston, Lee F. (TAX)
Subject: RE: U.S. v. Brockman 4:21cr009 GCH
Attachments: Govt Revised Joint Letter re 17(c) Subpoenas.pdf

Jason

I have merged the parties respective positions into one letter and made it fit on two pages. The paragraph from your letter that states your position is fully incorporated into this letter with NO edits. If we do not hear back from you by noon EDT we will send the letter to Chambers as is.

Corey J. Smith
Senior Litigation Counsel
Tax Division
(202) 514-5230

From: Varnado, Jason S. <jvarnado@jonesday.com>
Sent: Wednesday, May 12, 2021 8:14 PM
To: Smith, Corey (TAX) <Corey.Smith@tax.USDOJ.gov>; Keneally, Kathy <kkeneally@jonesday.com>; Loonam, James P. <jloonam@jonesday.com>; Druce, Georgina N. <gdruce@JonesDay.com>
Cc: Magnani, Christopher (TAX) <Christopher.Magnani@tax.USDOJ.gov>; Langston, Lee F. (TAX) <Lee.F.Langston@tax.USDOJ.gov>
Subject: RE: U.S. v. Brockman 4:21cr009 GCH

Corey:

Attached is a PDF of the letter to Judge Hanks. As you can see, it easily fits on two pages. This obviously makes more sense coming from you and on your letterhead, but let me know if the government is requesting that we submit it. Regardless, our full position should be communicated to the Court.

Best,

Jason Varnado
Partner
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Houston, Texas 77002
Office +1.832.239.3694
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From: Smith, Corey (TAX) <corey.smith@usdoj.gov>
Sent: Wednesday, May 12, 2021 5:05 PM
To: Varnado, Jason S. <jvarnado@jonesday.com>; Keneally, Kathy <kkeneally@jonesday.com>; Loonam, James P. <jloonam@jonesday.com>; Druce, Georgina N. <gdruce@JonesDay.com>

Cc: Magnani, Christopher (TAX) <Christopher.Magnani@usdoj.gov>; Langston, Lee F. (TAX) <Lee.F.Langston@usdoj.gov>

Subject: RE: U.S. v. Brockman 4:21cr009 GCH

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Jason.

We think your response is too lengthy to include completely and say under the Courts 2 page length. We will prepare a draft with your position as stated in your email, but more briefly.

Corey J. Smith
Senior Litigation Counsel
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(202) 514-5230

From: Varnado, Jason S. <jvarnado@jonesday.com>

Sent: Wednesday, May 12, 2021 5:56 PM

To: Smith, Corey (TAX) <Corey.Smith@tax.USDOJ.gov>; Keneally, Kathy <kkeneally@jonesday.com>; Loonam, James P. <jloonam@jonesday.com>; Druce, Georgina N. <gdruce@JonesDay.com>

Cc: Magnani, Christopher (TAX) <Christopher.Magnani@tax.USDOJ.gov>; Langston, Lee F. (TAX) <Lee.F.Langston@tax.USDOJ.gov>

Subject: RE: U.S. v. Brockman 4:21cr009 GCH

Corey:

Your letter yesterday asked the Court for an expedited briefing schedule and suggested there was insufficient time for a conference. We oppose subjecting ourselves to an expedited briefing schedule given that the government is seeking Rule 17 subpoenas from non-medical personnel (other than Drs. Yudofsky and Lai, to whom we do not object) and entities not included in the original Motion. We disagree with the characterization of your new requests as merely an "expansion" of your prior Motion and we believe this issue is best addressed through formal briefing. Your letter today seeks a conference with Judge Hanks, and we do not object to that request. Although we are not certain that Rule 6(E)(1) applies in this instance, as Rule 17 is not a "discovery" vehicle, we nevertheless do not object to the submission of a joint letter that fairly sets forth the parties' positions and the government's request for a conference. We propose the following:

Dear Judge Hanks:

The government requests a conference regarding additional Rule 17(c) subpoenas it intends to seek in advance of the Competency Hearing, which is currently scheduled for September 13, 2021. The defense does not object to the government's request for a conference. The parties represent that on May 11 and 12, 2021 they conferred on this matter.

The government's position is that its request for subpoenas to the individuals and entities listed below is an expansion of its initial Motion for Discovery Under Rule 17(c) ("Motion") (Dkt. No 26). In or about February of this year the government served the entities and individuals listed below with hearing subpoenas with no response. New subpoenas with the new hearing date of September 13, 2021 are now being served. For the reasons stated in its initial Motion, the government requests the Court to issue an Order compelling these witnesses to provide relevant documents within 30 days after service, instead of on the date of the hearing. The government takes the position that these entities and individuals possess evidence relevant to the issue of the defendant's competency, and should produce that evidence in a timely fashion.

The defendant does not object to Rule 17(c) subpoenas being issued to Dr. Stuart Yudofsky and Dr. Eugene Lai, for the same reason the defendant did not oppose the government's request with respect to eight of the ten physicians listed in the Motion—they are treating physicians related to the defendant's dementia. The defendant objects to Rule 17(c) subpoenas for the other individuals and entities listed below, at this time, because (1) they are non-medical professionals; (2) they are nowhere referenced in the government's Motion and therefore the government has not explained why they possess information that is specific, relevant and admissible as required by Rule 17 and *United States v. Nixon*, 418 U.S. 683 (1974); (3) the information will not be obtained for review by the government's experts in advance of next week's testing (which was the stated reason for the Motion in the first instance); and (4) the defendant seeks the opportunity to respond in writing to any request for information from the individuals and entities listed below.

Although the defendant believes orderly briefing will best aid the Court in determining these issues, the defendant does not oppose the government's request for a conference.

[Bullet point list of names to follow.]

Please feel free to submit this as a joint letter to the Court.

Best,

Jason Varnado
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From: Smith, Corey (TAX) <corey.smith@usdoj.gov>

Sent: Wednesday, May 12, 2021 12:00 PM

To: Keneally, Kathy <kkeneally@jonesday.com>; Varnado, Jason S. <jvarnado@jonesday.com>; Loonam, James P. <jloonam@jonesday.com>; Druce, Georgina N. <gdruce@JonesDay.com>

Cc: Magnani, Christopher (TAX) <Christopher.Magnani@usdoj.gov>; Langston, Lee F. (TAX) <Lee.F.Langston@usdoj.gov>

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**** External mail ****

Kathy et al

Attached please find a copy of a letter we intend to forward to Judge Hank's chambers today requesting a conference on our request for additional Rule 17(c) orders. Please let us know if it accurately states your position in this regard.

Corey J. Smith
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This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.

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